

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

REBECCA LYNNE BABBITT,

Appellant.

No. 37453-6-II

UNPUBLISHED OPINION

Armstrong, J. — Rebecca Lynne Babbitt appeals an order denying her request for a Drug Offender Sentencing Alternative (DOSA) sentence, arguing that because she showed a clear need for drug addiction treatment, the trial court abused its discretion in denying her request. We affirm.

FACTS

Rebecca Lynne Babbitt pleaded guilty to five felonies: two counts of identity theft in the second degree, two counts of forgery, and one count of second degree theft. Her offender score was 13, which resulted in a standard range of 43 to 57 months. The court set a sentencing hearing for a date two months after her plea to allow her to be evaluated for eligibility in the DOSA program. The DOSA evaluation would include reports from both the Department of Corrections (DOC) and Lifeline Connections, a Department of Social and Health Services licensed detoxification and rehabilitation facility.

The Lifeline Connections chemical dependency assessment summary stated that Babbitt “cannot stop her drug use without intervention . . . is in need of immediate inpatient treatment to arrest her IV meth use. . . [and the] counselor is quite concerned [that] Rebecca may die of a drug overdose before she gets to sentencing.” Clerk’s Papers at 73. The Lifeline Connections

counselor arranged for Babbitt to immediately check herself into an outpatient chemical dependency treatment facility in Spokane, and the trial court agreed to postpone her sentencing for another month so she could begin the treatment. Babbitt, however, never showed up for the treatment.

On the day of her sentencing, Babbitt failed to appear because she was unaware that the hearing was specially set on an upper floor of the Clark County courthouse. Babbitt and her attorney eventually found each other at the courthouse but were unable to proceed with the sentencing hearing that day. Babbitt's counsel arranged for the State to issue a warrant so that Babbitt could turn herself in, which she did.

Babbitt's actual sentencing occurred two months later. The State recommended against DOSA, arguing that Babbitt had displayed a lack of commitment to treatment by (1) not showing up for the treatment program in Spokane, (2) continuing to use methamphetamines after her plea hearing, and (3) failing to update her home address pursuant to the conditions of supervised release. Babbitt explained that she had not pursued treatment in Spokane because she did not have money to get there. She also argued that her failure to go to the Spokane treatment facility showed how serious her addiction was and her need for treatment under DOSA. The sentencing court ruled that Babbitt had forfeited her opportunity for DOSA and sentenced her to 50 months imprisonment.

ANALYSIS

Babbitt argues that there is overwhelming evidence of her need for treatment for methamphetamine addiction, and therefore the trial court's denial of a DOSA sentence was an

abuse of discretion. She further argues that the trial court's reliance on her failure to commit to treatment programs in the past was misplaced because that failure simply demonstrates her need for drug treatment.

The DOSA program is an attempt by the legislature to provide treatment for some offenders who are likely to benefit from it. *State v. Grayson*, 154 Wn.2d 333, 337, 111 P.3d 1183 (2005). The program authorizes trial judges to give eligible nonviolent drug offenders a reduced sentence, treatment, and increased supervision in an attempt to help them recover from their addictions. *See generally* RCW 9.94A.660. A qualifying defendant is entitled to have the trial court meaningfully consider her DOSA request. *Grayson*, 154 Wn.2d at 342. Absent a constitutional or procedural challenge, however, we will not review a sentencing court's discretionary decision to deny a defendant's request for DOSA. *Grayson*, 154 Wn.2d at 338. Babbitt has shown neither constitutional nor procedural error. Thus, we affirm the trial court's decision.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Bridgewater, P.J.

Hunt, J.

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